IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

MONDAY, THE 16TH JULY 2007 / 25TH ASHADHA 1929

WP(C).No. 15757 of 2007(A)

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PETITIONER:

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1. SEENAI GIRI ST.MARY'S CHURCH, THOLELI,
   REPRESENTED BY ITS TRUSTEE AS WELL AS PARISH
   MEMBER SRI.AJI MATHAI, S/O MATHAI AGED 35 YEARS,
   KAKKANATTU HOUSE, AIROORPADAM P.O.,
   KOTHAMANGALAM.

2. SRI.V.M.TOMY, S/O MATHAI, AGED 42,
   MANAGER, M.D.HIGH SCHOOL, THOLELIL,
   RESIDING AT VARRIAMATTU KUDIYIL HOUSE,
   AIROOPADAM, KOTHAMANGALAM.

BY ADV. SRI.PAUL K.VARGHESE

RESPONDENTS:

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1. THE STATE OF KERALA REPRESENTED BY
   SECRETARY (EDUCATION DEPARTMENT),
   GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DIRECTOR OF PUBLIC INSTRUCTION,
   VAZHUTHAKKADU, TRIVANDRUM.

3. THE DEPUTY DIRECTOR OF EDUCATION,
   CIVIL STATION, KAKKANADU, ERNAKULAM.

4. THE DISTRICT EDUCATIONAL OFFICER,
   KOTHAMANGALAM, ERNAKULAM DISTRICT.

5. FR.BABY JOHN, AGED 45 YEARS,
   PANDALIL HOUSE, PAREEKANNI P.O., OONNUKAL,
   KOTHAMANGALAM, ERNAKULAM DISTRICT.

6. SRI.SAJU.P.MATHEW, AGED ABOUT 48 YEARS,
   PUTHAYATH HOUSE, AIROOPADAM P.O.,
   KOTHAMANGALAM, ERNAKULAM DISTRICT.

BY SR. GOVT. PLEADER SRI. T.T. MUHAMOOD
ADV. SRI.DEEPU THANKAN
SRI.V.A.MUHAMMED
SRI.K.E.HAMZA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/07/2007 ALONG WITH WPC NO. 14078 OF 2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO 15757/07

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1. COPY OF THE BYE LAW OF THE 1ST PETITIONER CHURCH

EXT.P2. COPY OF THE BYELAW OF THE SCHOOL

EXT.P3. COPY OF THE APPROVAL ORDER NO.B1-14595/03 K.Dis. DT. 7/7/2003 OF THE DEPUTY DIRECTOR OF EDUCATION, ERNAKULAM

EXT.P4. COPY OF THE JUDGMENT IN W.P.(C) NO. 7247/06 DT.25.8.06

EXT.P5. COPY OF THE LETTER DT. 1.10.06 ISSUED BY 5TH RESPONDENT

EXT.P6. COPY OF THE JUDGMENT DT. 9.10.06 IN C.C.C. NO. 1245/04

EXT.P7. COPY OF THE PLAINT IN O.S. 389/04 FILED BY THE PETITIONERS BEFORE THE MUNSIFF'S COURT, MUVATTUPUZHA

EXT.P8. COPY OF THE DEPOSITION OF PW4, THE DISTRICT EDUCATIONAL OFFICER

EXT.P9. COPY OF THE ORDER NO. K.Dis. 5538/06 B2 DT. 6.10.06

EXT.P10. COPY OF THE ORDER NO.B1/9057/2006 DT. 9.4.07

EXT.P11. COPY OF THE REVISION PETITION DT. 14.4.07 FILED BEFORE THE 1ST AND 2ND RESPONDENTS

EXT.P12. COPY OF THE ORDER NO.22/98/F1/07 G.Edn. OF THE 1ST RESPONDENT DT. 20.4.07

RESPONDENT'S EXHIBITS:

EXT.R5(a). COPY OF THE KALPANA OF THE CATHOLICOSE

EXT.R5(b). COPY OF THE -DO- -DO-

EXT.R6(a). COPY OF THE ORDER DT. 9.12.06

EXT.R6(b). COPY OF THE INTERIM ORDER IN W.P. NO.25446/06 DT. 27.9.06

EXT.R6(c). COPY OF THE ORDER IN I.A. NO. 3749/06 IN O.S. NO. 389/06

/TRUE COPY/

PA TO JUDGE.

**A.K. BASHEER, J.**

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**W.P.(C). NOs. 14078 & 15757 OF 2007**

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Dated this the 16th day of July, 2007

**J U D G M E N T**

Seenai Giri St. Mary's Church, Tholeli and MD High School, Tholeli, which is under the management of the said Church, are yet again in the eye of a storm. The factional fight in the managing committee of the school had led to a spate of litigations in the past. This Court by a common judgment in W.P.(C) No.7247/06 and 2175/06 had issued certain directions to the controlling officer to take steps to ensure that election was held to the School Board in terms of the bye-laws. In fact election was held as directed. But the dispute and the bad blood still linger on. These two writ petitions are the off-shoot of the ongoing tussle between the rival factions.

2. It appears that the change of personnel in management consequent to the election was approved by the District Educational Officer, Kothamangalam. The said order of the DEO was however challenged by the rival factions before the Deputy Director of Education, Ernakulam. The Deputy Director reversed the order passed by the District Educational Officer and directed the said officer to take over management since according to him the election to the School Board was not held in a proper or legal manner.

3. It is agreed by the learned counsel for the parties that the order

passed by the Deputy Director of Education is without jurisdiction and therefore, the said order is liable to be set aside. I find considerable force in the above submission. Therefore the order passed by the Deputy Director of Education, Ernakulam, a copy of which is on record as Ext.P4 in W.P.(C) No.14078/07, is quashed.

4. It is the admitted position that the order passed by the DEO has been challenged by the previous manager Sri.Tomy and some other members of the parish Church before the Government. The said revision petition is pending before the Government.

5. It is also brought to my notice that the Vicar of the Church and previous Manager ,Sri.Tomy, have separately challenged Ext.P4 order passed by the Deputy Director of Education before the Government. Since I have already quashed the order passed by the Deputy Director of Education, the two revisions filed against the said order are to be treated as having non est. Therefore the Government need not consider those revision petitions.

6. What remains is only the revision petition preferred by the Sri.Tomy and others referred to above. Having regard to the entire facts and circumstances, these writ petitions are disposed of with the following directions:

(a) The Government shall consider and pass orders on Ext.R4(a) revision petition (in W.P. No. 14078/07) preferred by Sri.Tomy and others

strictly on its merit and in accordance with law, as expeditiously as possible, at any rate within two months from the date of receipt of a copy of this judgment. Needless to mention that the Government shall take a decision in the matter only after affording sufficient opportunity to the two rival factions and all others who are interested in the affairs of the Church and the school.

(b) Saju P. Mathew, the petitioner in W.P.(C) No. 14078/07, who is admittedly in management of the school, shall be entitled to make appointments in the school to the two posts of H.S.A. (Malayalam) and to one post of H.S.A. (Physical Science) provisionally, and subject to the result of the revision petition.

(c) The controlling officer shall approve the above appointments provisionally, if there is no other legal impediment. It will be open to the parties to produce the bye-laws and all other relevant documents before the Government at the time of hearing of the revision petition.

The writ petitions are disposed of in the above terms.

**A.K. BASHEER, JUDGE**

vps

**A.K. BASHEER, JUDGE**

**OP NO.20954/00**

**JUDGMENT**

**1ST MARCH, 2007**